



CERTIFICATE OF MAILING

I hereby certify that on the date indicated below this correspondence is being submitted to the USPTO on the following date and addressed to:

MAIL STOP: Amendment, COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, VA 22313-1450

Signature of ROEL CUEJILLO:

Date: August 31, 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Title: **MULTI-ITEM HOLDER DEVICE**

Applicant: **Jerome Glasser**

Confirmation No.: **4813**

Customer No. **40232**

Art Unit: **3677**

Application Serial No.: **10/715,669**

Examiner: **Robert J. Sandy**

Filed: **November 18, 2003**

Docket No.: **JGPAT012a03US**

RESPONSE TO DATED JUNE 6, 2009 OFFICE ACTION RELATING TO ELECTION NOTICE

MAIL STOP: Amendment
COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Examiner Sandy:

In connection with the above-referenced application, enclosed herewith for filing is Applicant's response to outstanding Office Action dated June 6, 2009:

ELECTION U.S.C. § 121

As required under 35 U.S.C. § 121, Applicant respectfully elects a single disclosed species for prosecution on the merits and, moreover, identifies claims encompassing the elected species. Applicant respectfully traverses the Examiner's restriction requirement and election; however, for purposes of responding to this Office Action and to obtain examination, Applicant hereby requests that an election please be recorded under 35 U.S.C. § 121.

While according to USPTO regulations the non-elected species should be withdrawn, as a result of the recent August, 2009 telephone conversation between Applicant and the Examiner, Applicant is presenting substantiations below for his contentions that the embodiment designated by the Examiner as "Species 1"

merits expansion to encompass, as well, “Species 2” and “Species 4” designated by the Examiner. It is exclusively based on the hope that such contentions will be persuasive to the Examiner, that Applicant provisionally elects an “expanded Species 1” for recordation.

Applicant specifically reserves the right to pursue in a divisional application the species not elected herein, and respectfully requests that the prosecution relating to this application continue with the claims as previously presented.

COMMENTS RELATING TO ELECTION OF SPECIES

Applicant maintains that the claims as presented essentially recite mutually encompassing characteristics. Pursuing prosecution based the Examiner’s contention that an election between different Species is warranted, Applicant respectfully avers that the embodiments going forward in this prosecution are based on a cruciform structure, and as such, this fact should be satisfactory towards achieving from the Examiner a disposition favorable to Applicant so that the claims as presented may be acceptable.

The structure at least of the embodiments identified by the Examiner as Species 1 and 2 are variants of the same, and merely recite different embodiments. As distinguished from Species 1, Species 2 (identified as New Fig. 42) discloses only one interior surface sloping in a gradient, whereas, for example, New Fig. 9 in Species 1 discloses two sloping interior surfaces. Applicant proposes that neither the fact that Species 2 has a structure disclosing only one sloping interior surface (as opposed to the two sloping interior surfaces as identified in New Fig. 9 of Species 1), nor the fact that New Fig. 42 in Species 2, further, specifically indicates a texture on the sloping gradient, warrants the interpretation that as an embodiment, “Species 2” merits its own “species”. Applicant respectfully contends that Species 2 and Species 1 should be considered members of the same species and requests that currently identified Species 2 be encompassed by and considered as a part of an elected “expanded Species 1”.

The species identified by the Examiner as “Species 4” is not, in fact, a “stand-alone”, entirely separate embodiment, but rather, a potential embodiment of an anterior back of at least an expanded elected expanded Species 1. Species 4, represented in prosecution by drawing figures New Figs. 22 and 23, discloses peel-away stickies and a magnetic element for 1) maintaining the holding of item(s) securely held in relation to the structure of a disclosed embodiment, and for 2) affixing said securely inserted item(s) to a wall-like structure (office cubicle separator, car door, refrigerator door, etc.) for display through use of peel-away stickies or by use of a magnetized element, as disclosed by the solid, thick black section in New Figs. 22 and 23, or alternatively, by the use of a push pin inserted through the central hole structure disclosed in New Figs. 22 and 23, which is the primary contemplated purpose of the structural central hole. As Species 4 is a potential back of an elected expanded Species 1, Applicant, further, respectfully contends that Species 4 and Species 1 should be considered members of the same species and requests that currently identified Species 4 also be encompassed by and considered as a part of an elected expanded Species 1.

Applicant respectfully pro-offers that it ought not to be burdensome on the Examiner to search the invention as disclosed in the application as a full search since the prior art of all the disclosed embodiments of the invention overlap in scope. The prior art to one embodiment should be applicable to all the other embodiments, and the embodiments do not have a recognized divergent subject matter. The embodiments would not likely raise different non-prior art issues under 35 U.S.C. § 101 and/or 35 U.S.C. § 112 first paragraph. There would also not be a serious search and examination burden if the restriction were not required.

CLAIMS

The following claims correspond to the elected “expanded Species 1”: 49, 50, 51, 52, 53, 55, 59, 65, 66.

CONCLUSION

Applicant is especially appreciative of the Examiner's efforts and of the extended courtesy relating to the re-sending and re-calculating of the time to respond to this outstanding Office Action as a result of Applicant's change of address.

Applicant intends to file a divisional application relating to this prosecution.

Applicant respectfully requests the entry of the amendments contained herein, and contends that this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes that a further telephone conference/meeting with Applicant would be advantageous towards the disposition of this case in a manner favorable to Applicant, the Examiner is requested contact Applicant at anytime at the telephone number listed below. A separate Request for Two-Month Extension of Time to Respond to this Office Action is being submitted in co-ordination with this Response. As Applicant has been called out of the country on an urgent and unforeseen family matter, the below "/S/" signature is deemed to constitute his effective and authorized signature. This Response is being submitted by facsimile, as well, to: (571)273-8300.

An early and favorable action is hereby requested.

Date: August 31, 2009

Respectfully submitted,

_____/S/
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